

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

HEALTH COALITION, INC.,

Plaintiff

v.

NEW ENGLAND ALLERGY ASTHMA  
IMMUNOLOGY & PRIMARY CARE,  
P.C. and THOMAS F. JOHNSON,  
Individually

Defendants

Civil Action No. 05 CV 11816 NMG

**OPPOSITION TO PLAINTIFF'S MOTION FOR AN ORDER COMPELLING  
DISCOVERY FROM THE DEFENDANTS AND REQUEST FOR A STAY  
PENDING COMPLETION OF THE COURT ORDERED MEDIATION**

NOW COME the Defendants in the above-referenced matter and oppose Plaintiff's motion to compel discovery and request a stay of further discovery pending completion of the court ordered mediation on the following grounds:

1. The parties attended a case management and scheduling conference in this court on December 20, 2005, at which time it was ordered by the presiding judge that the matter be referred to mediation through the court mediation service to be completed within sixty days.
2. Defendant's counsel is a sole practitioner and has been out of the office sick for substantially the entire month of December. Furthermore, Defendant's counsel underwent surgery on December 22, 2005. Plaintiff's counsel was aware of Defense counsel's practice limitation as a result of his illness prior to the filing of the foregoing motion.
3. Both at the conference on December 20 and numerous times by letter and phone call during the preceding month, Plaintiff's counsel was advised as to Defendants' counsel predicament and that discovery responses were being completed and would be forwarded as soon as possible. Document responses were served by Defendants' counsel

during the week prior to the scheduling conference and answers to interrogatories were reviewed and signed by the Defendants during the week of the discovery conference, but not forwarded to Plaintiff until today, because Defense counsel only returned to work on this date following his surgery.

4. The Plaintiff's claim in the subject action are a simple matter of goods sold and delivered and, although the Defendants' answer, affirmative defenses and counterclaim raise more complicated issues, the Defendants do not dispute the receipt of the goods, but only the pricing and terms and conditions thereof, and has attempted in good faith to resolve the matter before and during this litigation; hence the appropriateness of the referral to court mediation service.

5. Plaintiff's counsel certification filed with the Motion to Compel is not accurate in indicating that Defense counsel has not responded to request for discovery conference. To the contrary, Plaintiff's counsel was advised early and in writing at various times during the month of December of the status of discovery and intention to produce substantive responses. Further, Defense counsel believes the nature and extent of the Plaintiff's discovery requests and related motion to compel are overly broad and unduly burdensome and more designed to harass the Defendants than produce relevant discovery, given the nature of the claim and the fact that Defendants have now responded to the interrogatories and document requests.


WHEREFORE, Defendants request:

- A. That Plaintiff's Motion to Compel be denied;
- B. That discovery and further action be stayed pending completion of the court ordered mediation process; and

C. Such further relief as this court deems just and equitable.


Respectfully submitted,  
Defendants, New England Allergy Asthma  
Immunology & Primary Care, P.C. and  
Thomas F. Johnson,  
By Its Attorney,

Dated: December 30, 2005

  
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#### CERTIFICATE OF SERVICE

I, Arthur J. McCabe, certify that on this 30th day of December, 2005, I provided a copy of Defendant's Opposition to Plaintiff's Motion for an Order Compelling Discovery from the Defendants and Requests for a Stay Pending Completion of the Court Ordered Mediation, by mailing first-class mail, postage prepaid and by facsimile to (617) 261-3175, to Plaintiff's counsel, Brian M. Forbes, Esquire and Stacey I. Gorman, Esquire, Kirkpatrick & Lockhart Nicholson Graham LLP, 75 State Street, Boston, MA 02109.

  
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Arthur J. McCabe